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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

No. 79-1694

ROGERS HAMILTON, *Petitioner*

vs.

GENERAL MOTORS CORPORATION, *Respondent*

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

Respondent's Brief In Opposition

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Respondent's Brief In Opposition

Petitioner does not present any special and important reason for granting a writ of certiorari within the scope of Rule 19 of the Rules of this Court. Petitioner cites no case, or other authority, bringing his Petition within that Rule. Petitioner's effort to secure further review by this Court is bottomed upon the false premise that the opinion below of the Court of Appeals has established a standard that abrogates its holdings in *Rowe v. General Motors Corporation*, 457 F.2d 348 (5th Cir. 1972) and *Parson v. Kaiser Aluminum*, 575 F.2d 1374 (5th Cir. 1978). There is also the pretense that Petitioner was subjected to a discriminatory subjective interview resulting in the delay of Respondent's hiring him.

When the Fifth Circuit's opinion is correctly interpreted in the light of the facts that:

(1) As a part of an emergency hiring procedure in 1974, Petitioner was interviewed by two white electricians (who had no authority to approve or reject his application) and admitted to them that his only electrical work had consisted of changing light bulbs, running short conduits and hooking up extensions; and

(2) Petitioner demonstrated to the interviewing electricians that he could not hook up wires to the simplest electrical equipment used at the Plant; and

(3) Petitioner, in effect, admitted he did not have the electrical experience required for the highly sensitive electrical work at the Assembly Plant, which requirements were set forth in the national bargaining agreements between General Motors Corporation and United Auto Workers; and

(4) Petitioner did not challenge in the trial court the validity or propriety of these national bargaining agreement requirements of experience and qualifications;

it readily appears that the Fifth Circuit has in no way repudiated *Rowe* or *Parson*.

OPINION BELOW

The opinion of the Court of Appeals is reported at 606 F.2d 576 (5th Cir. 1979). The denial of Petitioners' Motion for Rehearing en banc is reported at 611 F.2d 882. These, together with the District Court's Judgment and Memorandum Opinion, are all included in the Appendix to the Petition for Writ of Certiorari and hence are not repeated herein.

JURISDICTION

The jurisdictional requisites for filing the Petition for Certiorari are adequately set forth in the Petition. Respondent denies that the Petition presents any of the grounds required by Rule 19-1(b) of this Court for the granting of a Writ of Certiorari.

QUESTIONS PRESENTED

Petitioner's two alleged questions as presented are not in fact proper questions because they are based upon false assumptions and are directly contradicted by the record in this case. Petitioner's statement of questions for review is, in effect, a summation of the grounds he urged in his Petition for Rehearing and Rehearing en banc in the Court of Appeals. There, he complained, as he does in the Petition in this Court, that the Fifth Circuit has misinterpreted and misapplied its own prior decisions. After consideration, however, the Petition for Rehearing was denied. No member of the panel nor Judge in regular active service on the Court requested that the Court be polled on rehearing en banc, and the Petition for Rehearing en banc was also denied. Petitioner has presented no proper questions to this Court by the Petition for Writ of Certiorari. The only proper question is:

> Whether certiorari should be granted when review is being sought of a lower court decision which turns solely upon an analysis of the particular facts involved?

STATUTES INVOLVED

The pertinent provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a) and of 42 U.S.C. §1981 are set forth in the Petition (pp. 73-74).

STATEMENT OF THE CASE

Respondent respectfully suggests that the statement contained in the opinion of the Court of Appeals for the Fifth Circuit properly sets forth all of the relevant facts. (606 F.2d 576, 578-581) Petitioner's statement of the case is inaccurate, incomplete, misleading and argumentative, compelling this counterstatement to correct his inaccuracy and omissions (Supreme Court Rule 40[3]).

At the Arlington, Texas, Plant of General Motors Corporation (GM), an electrician has a highly sensitive job. Qualified electricians are essential for the safety of other employees. They are necessary in order to keep the assembly line running. When the line is down, 2000 employees are idle. When electrical problems develop, electricians must be qualified to act immediately, efficiently and on their own initiative. (R. pp. 759-760)

The provisions of the national collective bargaining agreements between GM and UAW,[1] in effect at all pertinent times here involved, required 8 years journeyman experience or its equivalent of all electricians at the Plant. The agreements obligated GM to furnish

[1]International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

the Union written verification of such experience by former employers of electricians hired. (Def. Exs. 1, 3, 5, 7; R. pp. 546-549) These provisions are reasonably related to the necessary duties of such employees. (R. pp. 693-694; p. 1049)

General Motors' Efforts for More Than 10 Years to Find Black Electricians

As the record shows, there were only 58 black electricians in the Fort Worth SMSA (Standard Metropolitan Statistical Area) and 100 black electricians in the Dallas SMSA or a total of 158 in the combined areas. Not all of these were journeymen electricians. (Def. Exs. 74, 75; R. p. 617; pp. 1004-1005)

GM had made diligent efforts for more than 10 years prior to trial of this case to find and hire black electricians. These efforts included extensive newspaper advertising in minority and large daily newspapers. GM's representatives attended meetings of black community agencies and minority organizations seeking black electrician prospects. They made trips to schools and colleges with high percentages of black students seeking to interest students in electrical work at the Plant. They made periodic reviews of all personnel files of black employees at the Plant for electrician prospects. Periodic inquiries were made of other industrial plants in the area for the names of black electricians such plants might contemplate laying off. (R. pp. 530-533; pp. 615-617)

Prior to the time Hamilton applied for a job as an

electrician on May 8, 1974, only one black person had ever applied for such a position at the Plant. That applicant concluded he could not do the work required of electricians at the Plant and withdrew his application. (R. p. 695)

General Motors' First Contact with Hamilton

On April 7, 1969, Hamilton applied for assembly work at the Plant. He did not apply for work as an electrician at that time. (R. pp. 387, 431-432, 449; pp. 981-982)[2]

When Hamilton applied to the Plant for assembly work in 1969, he was given a pre-employment physical examination but he did not meet the physical standards required of all such applicants. The Plant's Medical Director found him to be unemployable as an assembler primarily because of limited motion in his back. He "could not stoop to where his fingertips touched the floor, or thereabouts." The right middle finger, distal phalanx, was stiff. (R. pp. 394-397) The standards applied in the examination of Hamilton were the same applied in the examination of white and black applicants. (R. pp. 416-417, 430)

[2]Even though the trial court in Finding of Fact 13, based upon abundant evidence found, "Plaintiff did not apply to Defendant for a job as an electrician in 1969" (Pet. p. 61), Petitioner states, "on April 7, 1969, Hamilton was refused employment as an electrician. . . ." (Pet. p. 9).

The 1974 Emergency Hiring of Electricians by GM

In April of 1974, due to the oil embargo and energy crisis, GM decided to change its operations at the Arlington Plant so as to assemble smaller size automobiles. This required complete remodeling of the Plant and extensive industrial electrical work. The Plant's employment supervisor received a request for 15 additional electricians. In order to meet the immediate need for these electricians, GM adopted a temporary procedure under which an electrician applicant who did not furnish with his application verification of his experience as required by the GM-UAW agreement could be considered if his written application showed the required 8 years journeyman experience and qualifications. The applicant could be hired if (1) the employment supervisor approved of the acceptance of his application; (2) the chief electrician after interviewing the applicant believed him to be qualified and could meet the GM-UAW agreement requirements; and (3) the Plant's Labor Relations Department approved of the temporary employment.[3] However, under this procedure, an applicant was still required to furnish written verification of his experience and qualifications within a reasonable length of time. If he did not do so, he would be terminated. (R. pp. 519-520)

Twenty white persons who applied to GM for the positions of electrican were not hired during this emergency period from April 3 to August 7, 1974. One

[3]It was the function of Labor Relations to furnish UAW with written verification of a new employee's journeyman qualifications, as set forth in the national bargaining agreements.

applicant did not appear for his interview with the chief electrician. The remaining 19 white applicants were rejected because of insufficient experience and lack of required qualifications. (Def. Ex. 44; R. pp. 527-529)

During the same period, 13 white electricians were hired, being 39% of those who applied. (Pl. Ex. 7; R. p. 571)

The only black who applied was Hamilton. We next turn to GM's efforts to find him qualified so he could be hired.

Hamilton's Application

The precise procedure outlined above was followed by GM in connection with Hamilton's application. To be specific:

(1) Hamilton filed his application on May 8, 1974. (R. p. 18)

(2) Hamilton presented no written documentation to verify his claim of journeyman status or the required qualifications as an electrician under the GM-UAW agreement. He was first interviewed by Bill Roach. (R. pp. 520-522)

(3) Roach reported to Jack Hogge, employment supervisor, that he had interviewed Hamilton and "felt like we had an electrician that *might* qualify." (R. p. 520)

(4) Hogge reviewed the application and authorized Roach to have Hamilton interviewed by the Plant's chief electrician. (R. p. 520)

(5) Dale Hurd, the Plant's chief electrician, reviewed Hamilton's application with him and inquired as to just what work he had done for the employers listed on his application. Hamilton admitted that his electrical work had consisted principally of merely changing light bulbs, running short conduits and hooking up extensions, requiring little knowledge of electricity. Hurd then inquired of Hamilton the ways in which he would handle simple installations and other electrical work required to be performed by electricians at the Plant. Hamilton's answers indicated a complete lack of qualifications for such work. Hurd then drew a schematic of the simplest electrical equipment used at the Plant and asked Hamilton how he would hook up the wires on this equipment. Hamilton could not hook these up correctly. When asked about the fundamental principles of electricity, Hamilton showed a complete ignorance of these. Hurd advised Hogge that Hamilton did not have the qualifications of an electrician. (R. p. 465; pp. 696-702)[4]

(6) After getting Hurd's report, Hogge called Hamilton into his office and explained "that it didn't appear he had the qualifications" for the electrical work at the Plant but advised Hamilton if he would furnish "documentation of the type of work he had done in the past," he would "see if we couldn't hire

[4]Hamilton's application could not have been rejected by the chief electrician, the employment supervisor, any other GM employee who interviewed him, or labor relations. Instead such application could have been rejected only by the management committee which ultimately considered Hamilton's application. (R. p. 526)

him." Hamilton agreed that he would secure such documentation. (R. pp. 520-521)

Hogge heard nothing further from Hamilton for 12 days. On May 20, Hamilton called Hogge and reported that he was having difficulty securing written verification of his experience and he did not "have the money and time to get it." Hogge replied that he would do what he could to get such verification and commenced trying to do so. (R. pp. 521-525)

In the telephone conversation on May 20, Hamilton indicated to Hogge for the first time that he had not received a fair interview with Hurd. Hamilton was invited to return to the Plant on May 21 for an interview with another electrician. (R. p. 521)

Hamilton was interviewed by Sam Pollock, general maintenance foreman, with 27 years of electrical experience. He had not discussed with Hurd the latter's interview with Hamilton. After a long interview, Pollock reported to Hogge that Hamilton did not have the qualifications of a journeyman electrician. (R. pp. 1047-1057)

GM's Efforts to Find Hamilton Qualified

Notwithstanding the reports received from the chief electrician and the general maintenance foreman, the employment supervisor continued his efforts to find some basis for the Plant's hiring Hamilton. He called all of the former employers which Hamilton had listed (most of them several times) and inquired of other employers which he had learned of through his persis-

tent inquiries. As the employment supervisor testified, he was doing all he could "to get verification for him and see if we could help him." His inquiries continued and shortly after June 10, 1974, he contacted Big Tex Construction Company which reported that Hamilton had done some journeyman electrician work for it. This was the first report that Hamilton had done any work such as the Plant required and as contemplated by the GM-UAW agreement. (R. pp. 521-525) With respect to that conversation, the employment supervisor, Jack Hogge, testified:

> "THE COURT: For clarification, did you give what you found out from Big Tex? What did you find out?
>
> A. That he had worked running service to a mortuary in Duncanville, I believe it was, to King's Liquor Store, and had worked in putting in a shopping center. They did verify that.
>
> Q. For how long a period of time?
>
> A. Really two or three months in there, as best I could recall was about as long a period of time as it was." (R. p. 526)

After he had completed his investigation, Hogge testified that:

> "Then with all of this documentation that I had accumulated on my own, which was quite a bit involved—I had never done this before for any other employee—I took all of this documentation into the Labor Relations Department and had them to completely review it." (R. p. 526)

Hamilton's Former Employers Verified His Lack of Experience and Qualifications at Trial

Hamilton's former employers, who testified at trial, verified his lack of experience and qualifications as a journeyman electrician. The testimany showed that Hamilton had:

(a) Worked at the W. T. Waggoner Building from April, 1959, to June, 1963, as a general maintenance employee, replacing light bulbs, fluorescent lights and light switches. Electrical work there was done by "an outside electrician." (R. pp. 784-785)

(b) Worked at Leonard's from June, 1963, to January, 1966, running extension cords and short pieces of conduit and repairing lights occasionally. Real electrical work there was done by outside electricians. (R. pp. 898-900)

(c) Worked as an electrician trainee at Stevens Corporation from May, 1966, to May 13, 1968, when he was for the first time classified as a maintenance electrician. He was discharged on July 2, 1968, for tardiness and a bad attitude toward his work. He was re-employed in September of 1968 and worked as a maintenance electrician there to January, 1969. (R. pp. 838-840)

(d) Worked as an assembler for General Dynamics from April 22, 1969, to April 10, 1970, when he was laid off and again from May 12, 1970, to January, 1971, when he was discharged. He did not apply for nor perform electrical work there. Assemblers and

electricians belong to different unions there. Hamilton was a member of the machinists union. He was never a member of the electricians union and "was not qualified to be." (Def. Exs. 21, 86, 87, R. pp. 883-886, 895, 897)[5]

Although a journeyman electrician's license from governmental authority is not required by paragraph 178 of the GM-UAW agreements, Hamilton's inability to secure such a license is closely related to his lack of qualifications as such an electrician. (Def. Ex. 5)

Hamilton took examinations for a certificate as a journeyman electrician with the City of Fort Worth (twice in 1972 and once in 1974) and failed the examination each time and was never issued a license as an electrician. (R. pp. 187-192)

In his oral deposition, Hamilton testified that he took and passed the examination and received a certificate as a journeyman electrician. However, he admitted in the trial court that this testimony had been false, testifying:

> "Q. You never received a journeyman's license, did you?
>
> A. No, sir.

[5]No one from American Manufacturing Co. testified at trial but advised GM that from October, 1972, to May, 1974, Hamilton worked for it primarily doing light electrical work "in an area where there is no heavy electrical work." (P.Ex. 6) Some of this work might be classified as journeyman work. (R. pp. 524-525)

Q. So the facts in that deposition are not true.
A. No." (R. pp. 192-196; Def. Ex. 25)[6]

GM Management's Consideration of Hamilton's Application

After Labor Relations reviewed all of the information which Hogge had submitted, there was a conference of those in top management. The witness, Don Whitney, testified:

> "Q. Do you recall what date now?
>
> A. On June 27th we had a meeting with the plant manager, the plant engineer, the personnel director, and myself at which time we decided that Mr. Hamilton would be tendered a job offer."
>
> * * * *
>
> "Q. Yes. Now, how long did that meeting last?
>
> A. Roughly three hours." (R. pp. 969-970)
>
> * * * *
>
> "Q. Based upon your experience in the ten years, tell the Court the case that has received the most personal attention by you and by the entire plant management at the Arlington, Texas, plant.
>
> A. This particular case of the hiring of Rogers Hamilton received more personal consideration from both general supervisors, Labor Relations Division and supervisor of Employment Division,

[6]Notwithstanding this evidence of Hamilton's unquestionable lack of experience and qualifications, Petitioner at page 32 of the Petition claims that the trial court's Finding No. 40 (that on May 8, 1974, Hamilton did not have the 8 years journeyman electrical work required by the GM-UAW agreements) was without support in the record.

> as well as other staff in the plant than any I can recall." (R. p. 972)

Typical of the inaccuracies in the Petition is the statement at page 10:

> " . . . nine white electricians were hired almost as soon as they applied, and without having submitted any documentation of previous employment, (Plaintiff's Exhibit #4)."

Then at page 14, Petitioner cited P. J. Blubaugh as an example of alleged disparate treatment. Blubaugh testified:

> "Q. And that you first—well, that your items of documentation were not submitted until June 17, '74; June 21, '74, and July 3rd, '74. The question is: you were not asked to submit the documentation until sometime after you were hired, were you?
>
> A. I had brought with me my DD214N, my recommendation from Mike Brown and American Manufacturing. And they wanted to see more than just the recommendations. They wanted to send out to the people that I had worked for." (R. p. 765)

The DD214N form referred to in the answer showed that Blubaugh had been in the U.S. Navy. He was an electrician trainee on the U.S.S. Enterprise in 1963. He was promoted to electrician fireman and then attended the Navy's electrician school. He was next assigned to the U.S.S. Forrest Royal, where he

was responsible for all electrical work on the ship. After his discharge in 1967, Blubaugh did journeyman electrical work for Brown Electrical Co., American Manufacturing Co. and others until he applied for work at General Motors. (R. pp. 750-754) He is licensed as a journeyman electrician by the City of Fort Worth. (R. p. 760)

We have reviewed the significant facts in some detail with the belief that this factual analysis will be of maximum helpfulness to the Court in determining whether the cases cited by Petitioner have any application whatsoever to this case.

ARGUMENT

Reasons for Denial of the Writ

Employment discrimination cases in general primarily turn upon the Court's analysis of the particular facts involved and the credibility of the witnesses, *Hayden v. First National Bank of Mount Pleasant, Texas*, 595 F.2d 994, 997 (5th Cir. 1979); and, as such, are particularly inappropriate for review by writ of certiorari, *Southern Power Company v. North Carolina Public Service Company*, 263 U.S. 508 (1924). The trial court in this case made 53 findings of fact including both subsidiary and ultimate findings of fact. The standard for review of such findings is contained in Rule 52(a) of the Federal Rules of Civil Procedure which provides that "[f]indings of fact shall not be set aside unless *clearly erroneous*, and due regard shall be given to the opportunity of the

trial court to judge of the credibility of the witnesses." (emphasis added)

The record in this case amply supports the subsidiary findings of fact made by the trial court which in turn support the trial court's ultimate findings that GM did not discriminate against Petitioner in any respect. Furthermore, the record supports the lower court's finding that oral interviews by GM in its application process for entry into the skilled trades were not used as a mechanism for discrimination against blacks at the Arlington assembly plant.

Petitioner has not presented any of the reasons listed in Rule 19 of the rules of the Supreme Court as a proper basis for this Court to grant a writ of certiorari in this case. Petitioner has not shown that the Court of Appeals' decision is in conflict with the decisions of another Court of Appeals on the same matter, or that the Court of Appeals has decided a federal question in a way which is in conflict with applicable decisions of this Court.

Petitioner's sole basis for seeking a writ of certiorari for review by this Court is an alleged conflict between decisions rendered by the *same* Court of Appeals. Respondent submits that even if there were a direct conflict between decisions rendered by the Fifth Circuit, it would not be a basis for granting a writ of certiorari. However, we will show that the decision of the Court of Appeals is not in conflict with its own prior decisions. Furthermore, Petitioner alleged such a conflict in his Motion for Rehearing en banc in the Fifth Circuit, but the Judges of the Fifth

Circuit failed to perceive such a conflict and denied the Motion for Rehearing en banc.

The Opinion of the Court of Appeals Is Not in Conflict With Its Prior Decisions

Rowe v. General Motors Corporation

When the Fifth Circuit handed down its Opinion in *Rowe*, it left no room for speculation as to the scope of its holding, saying:

> "All we do today is recognize that promotion/transfer procedures which depend *almost entirely upon the subjective evaluation* and favorable recommendation of the immediate foreman are a ready mechanism for discrimination against blacks much of which can be covertly concealed and, for that matter, not really known to management." (457 F.2d at p. 359) (emphasis added)

Later decisions of the Fifth Circuit have shown beyond doubt what it meant in *Rowe* by "subjective evaluation." For example, in *Robinson* v. *Union Carbide Corporation*, 538 F.2d 652 (5th Cir. 1976), the Court found such subjectivity in the promotion decision based upon the questionnaires and evaluation forms used by Union Carbide requiring the interviewer's evaluation concerning a candidate's "adaptability," "bearing, demeanor, manner," "verbal expression," "maturity," "drive," and "social behavior."

A prima facie case of discriminatory employment practices in job allocations was also found in *James v. Stockham Valves and Fittings Company*, 559 F.2d 310

(5th Cir. 1977), wherein the Court, citing *Rowe*, said:

> "Here initial job assignments were made on the basis of decisions by white departmental supervisors without any formal selection standards or written guidelines. Similarly, transfer decisions were made without objective standards by the largely white supervisory staff. For promotions, seniority controlled only when the supervisor decided that applicants were approximately equal in qualifications, a largely subjective decision made by predominantly white supervisors." (559 F.2d at p. 330)

In each of these cases, the court focused on the presence of subjective evaluation procedures and their potential for discriminatory use. However, the record in the case at bar clearly demonstrates that the procedures utilized at the Arlington Plant to review Hamilton's application for entry into a skilled trade were based upon objective rather than subjective criteria. As stated by the Fifth Circuit in *Hamilton*, the test set forth in *Rowe* is one of "objective fairness" and accordingly each case must be evaluated on its facts.

Objective criteria for the ultimate hiring decision with regard to Hamilton were found in the GM-UAW collective bargaining agreement. As the Fifth Circuit noted at 606 F.2d 580 of its opinion in *Hamilton:*

> "In the instant case, unlike *Rowe*, there is a valid objective criterion, the qualification required by the collective bargaining agreements. We are not prepared to say that the existence of subjective oral interviews in the employment process will render that process per se discriminatory

where there are meaningful, known objective standards involved."[7]

When the test of objective fairness first announced in *Rowe* is applied to the facts of this case, the record demonstrates that the procedure used to evaluate Hamilton did not grant veto power to the interviewers and valid objective criteria existed in the GM-UAW agreement as to the method of selecting personnel for entry into the position of electrician. The decision in *Hamilton* was a reasoned application of the *Rowe* test of objective fairness to the facts of this case.

Parson v. Kaiser Aluminum

Similarly, there is no conflict between the decision in *Hamilton* and *Parson v. Kaiser Aluminum*, supra. The trial court in *Parson* dismissed the individual suit of Parson and a co-plaintiff as well as the class claims at the conclusion of the plaintiffs' testimony, and found that the promotion procedures used at the Plant contained appropriate safeguards to ensure that blacks would be given consideration equal to that of whites. However, a panel of the Fifth Circuit found that the trial judge erred in considering plaintiff's individual claim as if his promotion requests had been processed under a procedure which had not been adopted until six years after he filed his application, and remanded the case for a reevaluation under the

[7]In his Petition for Rehearing en banc, Petitioner for the first time questioned the requirement set out in the GM-UAW agreement requiring 8 years experience as an electrician or the functional equivalent. It is well settled in the Fifth Circuit that a party cannot for the first time raise a new theory or issue on appeal that was not presented to the Court below. *Capps v. Humble Oil & Refining Co.*, 536 F.2d 80 (5th Cir. 1976); *Autrey v. Williams and Dunlap*, 343 F.2d 730 (5th Cir. 1965).

promotion standards which existed at the time of his application. The panel also noted that at the time Parson made his request, Kaiser gave shift foremen veto power over any applicant and specified no substantive criteria for guiding selections.

However, the procedures condemned in *Parson* bear no similarity to the procedure utilized by GM to evaluate Hamilton. The procedures employed at the GM Plant did not depend upon the subjective evaluation and favorable recommendation of the immediate foreman or anyone else. No one person had the authority to turn down Hamilton's application. The record demonstrates that the interviews of Hamilton by the chief electrician and general maintenance foreman were fair and related directly to the qualifications of Hamilton to perform electrical work at the Plant. Similar interviews were given and similar standards were applied to the white applicants who applied for jobs as electricians during the 1974 emergency, including 19 white applicants who were found to be disqualified. (R. p. 527)

Griggs v. Duke Power Co.

At page 11 of the Petition, the case of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) is mentioned with a vague intimation that it has some application to the facts of this case. Petitioner acknowledges that *Griggs* does not address the question he seeks to have this Court raise without any basis in the record or in the decision of the Court of Appeals. In fact, *Griggs* supports the decision below.

In *Griggs*, this Court noted that:

> "On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used." (401 U.S. at p.431)

This Court concluded its Opinion with the statement:

> "Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any test used must measure the person for the job and not the person in the abstract." (401 U. S. at p. 436)

The electricians' interviews of Hamilton related solely to questions about his electrical experience and qualifications.

CONCLUSION

Petitioner has failed to demonstrate that there are any grounds for the exercise of this Court's discretionary certiorari jurisdiction. The holdings in the Fifth Circuit conflict with no decision of another Court of Appeals nor of this Court. The Court of Appeals has not erroneously decided an important question of federal law nor is any important question of federal law presented by the Petition.

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Ira Butler, counsel for General Motors Corporation, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify on the 16 day of May, 1980, service of this Brief in Opposition to the Petition for Writ of Certiorari has been made upon Petitioner, Rogers Hamilton, by mailing three copies thereof by United States mail postage prepaid to Bill Kimble, West Texas Legal Services, First Savings Building, Suite 400, San Angelo, Texas 76903 and three copies to Don Gladden, 2814 Avenue D, Fort Worth, Texas, 76105, counsel of record for Petitioner.

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